THE CASE OF Founders Kinſmen.

THE CASE OF Founders Kinſmen: WITH Relation to the STATUTES of ~~All Souls~~ College, IN The Univerſity of ~~Oxford~~

Humbly propoſed and ſubmitted to Better Judgments.

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THE CASE OF Founders Kinſmen, &c.

A. Founds a College 250 Years ago, dies unmarried; by the Statutes of his College, he gives preference in Election of Fellows, to thoſe, *Qui ſunt vel erunt de conſanguinitate noſtra, & genere.*

Q. Whether there are any ſuch perſons now who can claim the Preference as Kinſmen? and who can claim?

IT is not unlikely, but that I ſhall be charged with Ingratitude, upon account of theſe Papers, which ſcruple at the pretenſions of Kindred, having my ſelf eaten a Founders Bread: A Charge

 indeed,

indeed, which of all things I abominate; and tho' the Argument may be popular, yet I hope it will not appear concluſive. Suppoſe this *A.* had been my Founder; yet, ſince Gratitude is but one part of duty to a Founder, if this which is called Gratitude, ſhall interfere with the obſervance of his Statutes, I conceive he Acts moſt conſiſtently, who keeps to them, which are the Rule of his Obedience, as to every particular. Beſides, I thought my ſelf oblig'd in common juſtice to propoſe ſomewhat of this nature; for tho' in Acts of mere favour and grace, the reſpect had to any (tho' never ſo remote) Relation to a Founder, or Benefactor, be truly commendable, yet when they pretend to a ſtrict right, and many additional advantages, to the prejudice of others it may be more deſerving, nay ſometimes of their Seniors in the College; I thought I ſay in Common Juſtice, ſuch a pretenſion ought to be ſcrupled and examined, and, if groundleſs, utterly diſcountenanced. I ſhall therefore propoſe theſe Queries, Collections, and Obſervations, intirely ſubmitting them to better Judgments how far they are concluſive againſt ſuch pretenſions, for to be peremptory and poſitive; beſides, that 'tis a diſgrace to fail in ſuch undertakings, I ſhall not take the Confidence, or pretend

tend to that Authority magiſterially to aſſert. I come now to the thing in hand, which is to be ſatisfied in theſe three Points.

Firſt, What this *Conſanguinity* is.
Secondly, Who are theſe *Conſanguinei*.
Thirdly, How far this Right of *Conſanguinity* extends.

As to the firſt Point, I find, that by the Civil and Canon Law, this Conſanguinity muſt be defined * and ſtated. Now by the Civil Law there is no proper Conſanguinity ſtrictly taken, as I think, but between Brothers, and Siſters of the ſame Father. All other Relation, being either *Agnatio per lineam maſculinam*, or elſe *Cognatio per lineam fœmininam*. But the difference of theſe two being taken away †, Kindred may be more largely called *Cognatio generalis*, or *Jus eorum quos ab eodem ſtipite deſcendentes ſanguis conjunxit*: And according to this definition we find *Conſanguinitas*, *q. ſanguinis unitas*, to ſignifie this *Cognatio generalis*, by the Civil Law ||. Thus much for the ſtrict, and for the more large acceptation of the word by the

* *C.* 2. 35. *quæſt.* 3. † *Novell. De Hæred. ab inteſtato*, 118. §. *Nullam vero.* || *L. deſcriptionis C. de imponend. lucrat. deſcript. & conſanguinitate in gloſſ.*

Civil Law; conſonant to which large uſe of the word the Canoniſts take the ſame; the Laws therefore agreeing, Conſanguinity is it not That Relation which one perſon has to another as deſcended lineally from him, or that Relation which two perſons have to each other as coming from the ſame common ſtock, whether by the male or female ſide? This Conſanguinity I find alſo is threefold: 1°. *Aſcendentium*, The Relation of the Father, Grand father and their Wives, to their Children, Grand-children, *& ſic Aſcendendo.* 2°. *Deſcendentium*, as of the Children, *&c.* to their Father, *&c. & ſic deſcendendo.* 3°. *Tranſverſalium*, as between Brothers and Siſters and their Children, Uncles and Aunts and their Children, *& ſic de Cæteris ex utroque latere per dictam Novellam*, 118. Thus much for the uſual definition, deſcription, and diviſion of Conſanguinity allowed by all, as I conceive. I come now to the ſecond Point, who are theſe *Conſanguinei. Eos Conſanguineos dicimus*, ſays the Canon Law *, *quos divinæ, & Imperatorum ac Romanorum atque Græcorum leges, Conſanguineos appellant, ac in Hæreditate ſuſcipiunt, nec repellere poſſunt.* In ſome Books indeed I find, *Affines*,

* C. 2. 35. *quæſt.* 3.

ſo,

ſo termed; and *Bartolus* ſays, *Quod communis uſus loquendi, Conſanguineum appellat, etiam quocunque modo ſanguine conjunctum.* But if we conſider that in our Caſe, *A.* the Founder was never Married; that cuts off all pretenſions by Affinity, and of Children, and their Deſcendants: Aſcendants cannot be ſuppoſed by any means; and they being to be *de noſtra Conſanguinitate*, and *de noſtro Sanguine*; none ſure can be his kin, but by the Fathers, and Mothers ſide, and that will exclude all remoter Alliance, or thoſe *quocunque modo*; i. e. *remotiſſimo ſanguine Conjuncti.* Theſe things being premiſed, Are not the *Conſanguinei* to the Founder, thoſe allied to him *ex linea Tranſverſali*, as Brothers and their Children, *&c.* Siſters Children, *&c.* *& ſic de Cæteris in linea Tranſverſali*, of Statutable Age? Now theſe, *ex utroque latere*, being equally privileged *, they all claim to the very ſame degree. Which brings me to the third Point, how far, or to what degree this Right of Conſanguinity extends. Now becauſe the Civil and Canon Law differ in the Computation of their Degrees, this difference muſt firſt be ſtated: It muſt therefore be obſerved, what is ſaid, that the chief deſign

* *Novella, de Hæred. ab inteſtato*, 118. §. *Nullam vero.*

of

of the Canon Law, is to reckon the degrees, ſo as not to interfere with prohibited bloud, to prevent inceſtuous mixtures, and to promote relation and publick decency and honeſty. And becauſe Marriage cannot be, but between two * perſons, therefore the Canons place two in one degree, who, according to the Civil Law, are in two. For the Civil Law reſpecting only the Conveyance of Eſtates, and the Right of Succeſſion; and becauſe that Right is convey'd down from one to another, therefore *generata perſona gradum adjicit*. The Rules of each Law's Computation, ſee in the *Decretum* immediately preceding †. This being obſerved, the next thing is, to aſcertain which Computation we ought to follow: and, ſay our Books ||, *Certum eſt ſequendum eſſe Computationem legalem pro gradibus, nam quoad ſucceſſiones & in earum materia ſervanda eſt in utroque foro, Computatio legalis & non Canonica*: And that this is a ſort of Succeſſion, may appear by and by. Now Conſanguinity extends it ſelf more or leſs, according to the different matters, it is referred to, as may be ſeen at large *. But without doubt there cannot be a more ſubſtantial

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* *C.* 2. 35. *quæſt.* 4. † *Ibid. c.* 6. || *Garcias de beneficiis* 7. *par. c.* 15. *nu.* 25. * *Bertachini Repertorium Verb. Conſanguinitas.*

and

and favourable Conſideration, upon which account Kindred may claim the greateſt privileges, than in caſe of Succeſſion; and if the greateſt are there allow'd, there can be no reaſon to complain: And tho' in a Fellowſhip of a College, *Non ſucceditur Jure hæreditario, & Succeſſionis meræ*; yet where Kindred are called, it may be ſaid it is *Succeſſio aliquo modo, ſeu ad inſtar.* Now *A.* the Founder having made over his Eſtate to a certain number of Men, and having appointed them and their Succeſſors, his Heirs, he did *Illorum fidei committere*, to admit his Kindred into ſome part of the Inheritance in Common with them, and to allow them a Maintenance among them. And tho' *fidei commiſſum* may not take in, in all reſpects the true notion of ſuch a Fellowſhip; yet where we cannot be punctual, I conceive the Law will juſtifie a Reference to what is moſt likely. A Fellowſhip therefore in Relation to Kindred, eſpecially if we either conſider the Obligation the Law then laid upon the Clergy to provide for their *Conſanguinei* (and the Founder was of very high rank in that Order) or the deſign of the Foundation, namely. a Maintenance for Students: I ſay, if we conſider this, a Fellowſhip is a proviſion, a livelyhood, by way of a *ſingulare fidei commiſſum*, to be given

given them by the College; as the *Hæredes fidei Commiſſarii*, or *Fiduciarii* in this reſpect. And Succeſſion in *fidei commiſſis*, being to be regulated according to the Order of Succeſſion *ab inteſtato* *, the Aſcendants and Deſcendants ſucceed *in infinitum*; the Collaterals, who are meant here, only to the tenth degree, as you treat of ſimple and particular Succeſſion, as this is. Now that the tenth degree is the very laſt, may it not appear with ſubmiſſion?

Firſt, From the Letter of the Law.
Secondly, From Reaſon.
Thirdly, From the Univerſal Conſent of the Doctors.

And firſt from the Letter of the Law, as by the Quotations †. 2*ly*. From Reaſon. For why ſhould the tenth degree be mentioned, if a longer Succeſſion was deſigned; and tho' ſome think *decimus quaſi numero rotundus & certus pro incerto ponitur*; yet when we find an allowance ||, *etſi deci-*

* *Graſſi Recept. Sent. lib.* 1. §. *Fidei commiſſum, quæſt.* 19. *nu.* 4. † §. *Fin. Inſtit. de Succeſſ. Agnat. gloſſ. ibid. Auth. de Hæred. ab inteſtato venientibus.* §. *Si vero neque fratres Verticulo Agnatorum. L. de legitimis Hæredibus & D.D. Covarrav. lib.* 1. *tit.* 13. *De Succeſſ. ab inteſtato. Anton. Gomez. l.* 8. *nu.* 5. *Ad L. Tauri. Cabed Deciſ. Luſitan.* 51, 52. *&* 61. *Surdis de aliment. tit.* 1. *quæſt.* 11. *Joan. Fab. Ang. Porc. Mynſ. Schneid. Weſembec. & Grot. lib.* || *Introduct. cap.* 30.

mo :

mo: Etſi there, without any force, may ſignifie thus much; namely, that they might ſucceed, *etſi*, nay tho', in the very utmoſt degree; namely, the tenth. Again, why ſhould the Law be leſs reſtrain'd in its Computation in one Caſe than in another, barely as to the uſe of Words; for here all the Commentators agree, that when it ſays *Cognati* ſhall claim *uſque ad ſextum gradum* *; there *ſextus eſt ultimus & non certus pro incerto*: But when the ſame Paragraph ſays, the *Agnati* ſhall ſucceed *etſi decimo*, then we muſt have an Evaſion, *Sed ratio non pati videtur, ut dicamus uno numero ſucceſſionem terminari, altero non item.* And altho' it may ſeem that there is ſome ground to extend it to *Longiſſimus* †, yet that *longiſſimus* muſt be *de Jure longiſſimus*, and that is explained by *Vinnius* ‖ upon the place to be *Decimus*. Once more in vain would be the Proviſion for the Succeſſion of the *Fiſcus* *, or *Eccleſia* †, or *Unde Vir & Uxor* ‖, whoſe reſpective Rights in Caſes of Failures are ſetled by Law, if all relation was perpetually privileged to ſucceed, tho' never ſo remote, even *in infinitum.*

* *Inſtit. de Cognat. Succeſſ.* §. 5. † *Inſtit. de legitima Agnat. Succeſſ.* §. 3. ‖ *Vinnius ibidem.* * *L. variiæ Cauſa, ff. Divus Pius, D. de jure Fiſci.* † *C.* 5. *&* 7. 12. *quæſt.* 5. *&* *c.* 21. 12. *quæſt.* 1. *c. ſed hoc de Succeſſ. ab inteſtato, & Abbas ibidem.* ‖ *L. maritus, C. unde Vir & Uxor.*

And therefore the *Jus Agnationis & Cognationis* being *æquatum* by *Novella* 118, are not both admiſſable only in the tenth degree, and no farther? I come now to the third Point the Authority of the D. D. who may be conſulted *; as alſo *Sanchez* † and *Lynwood* ||. But to inſtance more particularly in thoſe who have with ſubmiſſion decided the Caſe *in terminis*. And firſt for *Sanchez*, in the place afore-cited, he ſays from *Ancharanus*, *Propinqui* (who are the ſame as *Conſanguinei* by the Law) *ſunt illi tantum qui vocantur de jure civili ad Succeſſionem ab inteſtato*. And again from *Tiraquellus*, *Leges concedentes Conſanguineis retractum, ſanguinis ratione, intelligi debent de Conſanguineis uſque ad eum gradum in quo de jure civili ſuccedunt*. And again, *Ad legatum Conſanguineis relictum, tantum habent jus Collaterales qui ſuccedunt ab inteſtato, cæteri omnes pro extraneis habendi*; and there quotes *D. D.* Again, *Fidei commiſſum Conſanguineis relictum iis tantum relictum intelligitur, qui vocantur de jure civili ab inteſtato ad ſucceſſionem, ſcilicet uſque ad decimum gradum*. And this holds not only *in Temporalibus*, but alſo *in perpetuis*; for tho', as he goes on, *Qui-*

* *Vid. D. D. citatos in pag.* 10. *nempe Covarruv. Gomez. Cabed. ſardum, &c.*
† *Sanchez Conſil. Moral. lib.* 4. *cap.* 1. *Dub.* 24. || *Lynwood Provinciale, c. Ita quorundam, de teſtamentis.*

dam

dam J. Christi in legatis perpetuis, Consanguineos Collaterales in quocunque gradu extraneis præferendos dicunt, & rationem ponunt ex præsumptâ voluntate testatoris, cum enim velit legatum esse perpetuum, & nôrit Consanguinitatem intra gradum successibilem non durare in perpetuum, censendus est, velle in hoc Casu Consanguinitatem durare in perpetuum. Sed idem tenent D. D. says *Sanchez*, *in perpetuis ac temporalibus*, and quotes *Mantica*, who is my second Author. Now *Mantica* says *, *Si relictum sit cuilibet ex Consanguineis, omnes admittuntur ad decimum gradum, quia eo usque protenditur & defertur successio, & ideo qui vult admitti tanquam ex progenie, debet probare se esse in aliquo gradu, qui non sit ultra decimum. Quinetiam generaliter licet in legato, vel fidei commisso familiæ, vel Propinquis relicto, ex æquitate defendi possit, ut ultra decimum gradum protendatur, inspectâ testatoris voluntate & consideratâ communi horum fidei commissorum (i. e. perpetuorum) interpretatione, quæ sunt conservandæ Agnationis gratiâ*; yet, says *Sanchez* †, this Consideration, namely, *Conservandæ Agnationis gratiâ*, is *instar majoratûs, & sic aperte vult successionem esse perpetuam.* To reconcile this difference, he goes on, that, *Si perpetuitas cadit so-*

* *Mantica de Conject. ultim. volum. lib.* 8. *tit.* 12. † *Loco prius citato.*

lum in eos: i. e. Conſanguineos ne reddatur caducum, tum ſuccedunt in infinitum, ſed cum perpetuitas non cadit ſolum in Conſanguineos, ſed in aliis ſervatur, tum non eſt clara teſtatoris voluntas, quod eos vocaverat in infinitum, & ſic ſtandum eſt communi ſententiæ D. D. quod ſolum uſque ad decimum gradum extenditur. And this is alſo *Mantica's* * Opinion, That if the Will of their being ſo called *in infinitum, non poteſt ex verbis teſtamenti, ſive ex legitimis conjecturis colligi, à communi D. D. Opinione non eſt recedendum, nam mutanda non ſunt quæ certam interpretationem ſemper habuerunt; & in dubio crebrior ſententia accipienda eſt, nam integrum eſt judicium quod plurimorum ſententiis comprobatur.* My third Author is *Graſſus* †, who agreeing, 'tis needleſs to tranſcribe him. Now if neither from the Letter of the Statutes, or from any reaſonable Conjectures it ſhall appear, that *A.* the Founder deſigned this Right of Conſanguinity to extend *ad infinitum*, then will not this Point be cleared? The Statute then runs thus:

Inſuper cum ſecundùm Apoſtolum teneamur bonum facere ad omnes; maxime autem ad domeſticos fidei, ſtatuimus, ordinamus & vo-

* *Mantica lib. 8. tit. 12. Num. 46.* † *Graſſus Recept. Sent. lib. 1. §. Fidei commiſſum, q. 19.*

lumus,

lumus, quod in omni Electione Scholarium prædictorum futuris temporibus in dictum Collegium faciendâ, Principaliter & ante omnes alios, illi, qui sunt vel erunt de Consanguinitate nostrâ, & genere, (si qui tales sint) ubicunque oriundi, dum tamen sint reperti habiles & idonei secundùm conditiones superius & inferius recitatas, sine aliquo probationis tempore in veros dicti Collegii socios, ab initio eligantur, & etiam admittantur: Quibus deficientibus, tunc illi qui sunt vel erunt de locis vel parochiis, in quibus possessiones & res spirituales & temporales dicti Collegii consistunt, si juxta Ordinationes prædictas habiles sint, præ cæteris eligantur. Quod si tales in dicta Universitate, tempore Electionis hujusmodi celebratæ, minime reperti sunt, tunc pauperiores & indigentiores Scholares Clerici in dicta Universitate studentes hoc ordine præferantur; viz. *Præ Cæteris oriundi de Diocæsi* A. *& deinde seriatim de Comitatu,* B. C. D. E. *& sic de cæteris Comitatibus infra Provinciam* F. *dummodo in Grammatica sufficienter, & in cantu ut prædicitur competenter eruditi sint, & secundùm qualitates*

litates & Conditiones ſuperius & inferius recitatas habiles & idonei reperti & probati fuerint, ad dictum Collegium eligantur ac etiam aſſumantur, tot quot ſupplere poterint deficientem numerum. Quos omnes ſic electos ſeu aſſumptos (his qui de noſtro ſanguine fuerint duntaxat exceptis) per unum Annum in eodem Collegio ſtare volumus antequam in veros ſocios ejuſdem Collegii admittantur.

This then being the Statute, let us ſee whether this Right *in perpetuum* follows from the Letter of the Statute. *A.* the Founder begins, *Quia ſecundùm Apoſtolum, &c.* which alſo we find enforced by the Canon Law *. And ſince he takes the hints from the Law, may we not reaſonably ſuppoſe he purſues the Law according to the Obligation of it. And this being the Obligation, in caſe any one ſhould happen to die inteſtate, and ſo the *Conſanguinei* to be unprovided for, by the Party whilſt living: Here the Law did enjoyn the Biſhops and other Ordinaries to diſtribute what the

* *C. 14. & 16. diſtinct. 86. c. 5. de pœnitent. diſtinct. 2. c. inhibendum eſt. De Cohabit Cleric. & mulierum, & ſubminiſtrent, c. 1. 12. quæſt. 3. & c. 4, 5, 6, & 7. 12. quæſt. 5.*

perſon

perſon died poſſeſſed of *in Pias Cauſas, Perſonis decedentium Conſanguineis, Servitoribus, & Propinquis, ſeu aliis*: And this is Ordained alſo by a Provincial Conſtitution *. Again, from the uſing the Words *Conſanguinitas noſtra, Genus, & ſanguis noſter*; for without doubt, had it been deſigned that all manner of Relation, how diſtant ſoever, ſhould have been privileged, the Founder might have had terms of a leſs ſtrict Sence: And therefore, as we have good reaſon to ſuppoſe that he was not ignorant of that Conſtitution in *Lynwood*, ſo may we not ſuppoſe, that according to the ſame Law from which he took the hint, he would intend alſo the Perſons, he was obliged to take care for. And accordingly *Lynwood*, on the Conſtitution aforementioned, ſays, *Et Conſanguinei, & qui ſunt Conſanguinei, patet ex Hoſtiens, ſumma* †; where they are explained to be *communem ſanguinem habentes*: And again the ſame *Lynwood* ‖ ſays they are, *Qui de noſtro ſanguine ſunt*: Conſonant to which Acceptation, the Founder ſays, *Conſanguinei, & qui de noſtro ſanguine*. And if we ſhould allow *Genus* to be more large than either *Conſanguinitas*, or *San-*

* *Cap. Ita quorundam, de teſtamentis in Lynwood.* † *Hoſtiens. Summ. Tit. de Conſanguin. & Affin. §. 1, &c.* ‖ *C. Eccleſiarum, de rebus Eccleſ. non alienand. & conſanguineis.*

guis

guis noſter, yet is it not reſtrained by thoſe two? It being never once more mentioned, but the Founder keeps to *Conſanguinei* and *Sanguis*. And having thus far proceeded to ſhew the Founder had reſpect to the Law, both for the Obligation of providing for his Kindred, and alſo for what Perſons were truly ſo, come we now to ſee to what degree he meant them. And here according to *Lynwood* *, of whom I cannot ſuppoſe the Founder ignorant; and what ſay you, if *Lynwood* made this Statute? We find the tenth degree to be the utmoſt, for which the Church was to provide, in the Diſtribution of Inteſtate's Goods; and the Church being only to ſupply the Teſtator's neglect, and ſupplying it only to the tenth degree, can we ſuppoſe the Law to oblige farther? His Words are theſe †, *Unde breviter ſcias, quod in ſucceſſione ab inteſtato, Prima Cauſa eſt, Liberorum. Secunda, Aſcendentium cum quibuſdam Collateralibus, ſi extent. Tertia, Tranſverſalium. Primæ duæ in infinitum protenduntur, Tertia uſque ad decimum gradum. Et ſic in bonis Laici, & ſic in bonis Clerici inteſtati, deficientibus prædictis, Eccleſia præfertur fiſco.* And the more to confirm this, that the Founder had

* *C. ita quorundam, de teſtamentis & decedentium.* † *Ita quorundam & Decedentium. De teſtamentis.*

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an eye to *Lynwood* in this Provincial; or if it was *Lynwood*'s Opinion and Draught, he meant it purſuant thereto, we find the perſons to be provided for, in the College, are ranked in the ſame Order. *Conſanguineis Servitoribus, & Propinquis, ſeu aliis.* The Statute ſays, *Illi qui ſunt vel erunt de Conſanguinitate noſtra.* The Provincial *Conſanguineis.* The Statute ſays, *Illi qui ſunt vel erunt de locis in quibus poſſeſſiones, &c.* The Provincial, *Servitoribus & Propinquis*, and the Gloſs *& Propinquis, tam ratione loci quam ſanguinis.* Laſtly, The Statute ſays, *Tum pauperiores ſcholares, &c.* The Provincial, *Aliiſque*, which the gloſs upon *Aliiſque*, calls *extraneis, dummodo ſint pauperes.*

Come we now to conſider, whether he deſigned a Perpetuity to his Kindred. If the Founder had intended they ſhould claim *in perpetuum*, he might have uſed more expreſs words. And tho' he ſays, *Qui ſunt vel erunt*, yet *Erunt* may be underſtood, of thoſe which ſhould be in the tenth Degree; for 'tis likely there were ſome then capable when the Statute was made. Again, *Erunt* muſt be kept to *de noſtra Conſanguinitate*; and what that is, has been endea-

vour'd to be explained. Nor is *futuris temporibus* only to be reſtrained to the *Conſanguinei*, but relates alſo to Elections in general, which were to be made in Caſes of Vacancy for ever. Beſides, what-ever theſe words may ſignifie, yet may not, *Quibus deficientibus*, well agree with what has been propoſed? A word uſed in all Books to expreſs the extinction of Kindred, and as it were [redacted] put here to prevent all ambiguity: And that *Deficere* does imply a total extinction, a final period, may it not appear, from the conſtant uſe of the word, when joyned to terms, ſignifying *Stock*, *Family*, *Kindred*, and *Lineage*; being alſo explained in that ſence, from the Founders making after a new Degree of Privileged perſons, a new Subſtitution? Again, becauſe when he provides for the *pauperiores Scholares*, *&c.* in caſe of want of thoſe *in locis ubi poſſeſſiones*, *&c.* he is ſo far from uſing that word *Deficere*, as well conceiving, there would not be a want of People in thoſe places, a total extinction as I may ſay; but he uſes theſe words, *Quod ſi tales tempore Electionis minime reperti fuerint.* And thus doth it not appear from Statute, and fair Conjectures, That here

here is a new Subſtitution, *Et perpetuitas non cadit in Conſanguineos, ſed in aliis ſervatur*; which is the difference required by *Sanchez*, in the place afore-cited, to fix it to a certain degree, and not to extend it *in infinitum*. Since therefore neither according to Law, the General Opinion of the D. D. Statute, or fair Conjectures it does appear (with ſubmiſſion ſtill) that there is any privilege beyond the tenth Degree, may we not conclude with *Mantica*, afore-cited, *Ideo qui vult admitti tanquam ex progenie, debet probare ſe in aliquo gradu, qui non ſit ultra Decimum?* And that too, aſcending to the very Founder; for altho' in other Caſes, a Relation to the laſt immediate Poſſeſſor, is a good claim for the next Heir, yet here the Law looks no farther than a Poſſeſſion continued from the immediate to the next Taker: But in our Caſe, no one claims by Right of Succeſſion, ſtrictly ſo called; or as related to a former Kinſman, but from his own next a-kin, as mediately related to the Founder; ſo that a flaw in immediate or mediate Kindred ſpoils the Line. Beſides, ſuppoſe I am indiſputably related to one who ſpeed as a Founders Kinſman, the proof he

made of His relation is unknown to the Preſent College; and ſince I found my Right upon a Special qualification, even to the prejudice of others elſe Eligible, I ought to ſhew my Pretenſions, and the Society are to judge of the clearneſs of my Title.

It may not be amiſs perhaps to ſay, how improbable now it is to fix any tolerable Deſcent; and where ſuch Memoirs, which require all the punctilio's of Niceneſs, which are ſo difficultly adjuſted, and which are often ſo careleſly neglected: I ſay, where ſuch Memoirs have great Chaſms and Diſcontinuances, and cannot carry the Relation up to the firſt of the Branch.

Again, where the ancienteſt *Memorandums* are an hundred Years ſhort of ſuch a Founder, there is, I ſay, juſt reaſon to ſuſpect the exactneſs of ſuch a Deſcent. Beſides, the Methods of ſuch Regiſtrings are very faulty, and ſo far from being exact, and to be relied upon, that they deſerve little credit, it having been ingeniouſly confeſſed, that the very perſons Words have (and that uſually too) been taken, for what Family they have been related to.

But

But however unlikely it may be, to bring an exact and nice Title; yet where there is ſome ſpecious ſhow, eſpecially ſince the Electors are ſworn when admitted Fellows, to preferr the *Conſanguinei*, 'tis beſt to err on the ſafeſt ſide. 'Tis true indeed, this may be ſo, where no one elſe is like to be wronged by theſe Pretenſions, who may be equally, nay more eligible; and here we ought to judge rather nicely than favourably; eſpecially too, where he claims other advantages, beſides thoſe of a bare Election.

And as to the Oath, the Clauſe indeed is ſtill adminiſtred; but it was then made, when there were, or would be, in ſome time, Kindred.

However, the intent of the Founder, and the Law having determined this Right of Conſanguinity, according to what we have propoſed, the Obligation muſt ceaſe on Courſe. And beſides, that there are alſo other Clauſes or Things deducible from them, now ſworn to likewiſe in that Oath, not now warrantable. And thus much for theſe Queries, Collections, Obſervations, or what elſe you will call them.

But

But put the Case the most favourable for the *Consanguineus*:

Either he claims upon the Title of mere *Consanguinity*; or,

Of *Consanguinity* back'd with the other necessary Statutable qualifications.

He cannot claim upon the first account, because that very Statute which gives him a Right as *Consanguineus*, gives it not merely as such, but upon these Terms, *Dummodo sit habilis, &c.*

If he claims upon the Second, there the College are Judges of his Qualifications, both by Statute of the Founder, and Orders of their Visitor; which Orders provide, That the Candidates shall approve themselves by a three-days Examination, to every Fellow singly if he requires it, *Tam quoad quam ad doctrinam*; by which *Examen*, the Fellows are to judge. Now this Right of Judging and Choosing is not to be taken from the College; and if they Elect in due time, the Election is good, nor can a Fellow be put upon them.

First,

First, Becauſe none are Elected, but by the Head and Majority of the Fellows; and if the Choice be made in due time, there can be no Lapſe or Devolution.

Secondly, The College are upon their Oaths; and when they have Judged and Elected under that Obligation, which is the higheſt can be laid upon them, the Election of a qualified perſon is irreverſible. I have nothing more to add, but that theſe Papers are entirely ſubmitted, to the more knowing and experienced.

FINIS.
